IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4655 OF 2004

Mohd. Isak Inamullah Khan ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. S.B. Keswani, for the Applicant.

Mr. D.R. More, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

23rd November 2004

P.C.:

. Heard Counsel for the parties. Perused the record. The first contention canvassed before this Court is that co-accused Mohd. Iqbal Abdul Karim Patel has been enlarged on bail by this Court by order passed in Criminal Application No. 4638 of 2004 decided on 4th November 2004. It is submitted that this Court has after examining the contention raised therein observed that the prosecution case becomes doubtful as no explanation was forthcoming as to

what transpired on previous day and which is a relevant factor for grant of bail. That view has been taken in view of the unreported decision of the Supreme Court in Sarija Banu's case. It is next contended that assuming that the prosecution case, if accepted as it is, the contraband item recovered from possession of the Applicant is stated to be one kg. of charas. It is submitted that one kg. of charas cannot be said to be of commercial quantity, for which reason rigours of section 37 of the Act will have no application. To buttress this submission, reliance is placed on the Full Bench judgment of Himachal Pradesh High Court in the case of Ratto v. State of H.P. reported in 2003(3) Crimes 323, which has been followed by this Court in Criminal Application No. 4242 of 2004 decided on 20th October 2004. ON the above arguments, learned Counsel contends that the Applicant deserves to be enlarged on bail. The learned A.P.P. fairly accepts that on the second contention advanced before this Court, there is no contrary decision, which can be pressed into service to controvert that position. If it is so, we will have to proceed on the basis that the recovery of contraband stated to be made from the Applicant is not commercial quantity

and, as such, rigours of section 37 of the Act will have no application. As is rightly contended, since the case of the co-accused has been accepted by this Court, and this Court has expressed doubt about the events that unfolded on the previous day, as mentioned in the order dated 4th November 2004, even the present Applicant deserves to be enlarged on bail on the same reason. Accordingly, this application succeeds on the following terms.

(a) The Applicant is enlarged on bail in connection with CR.No. 36/2003 registered by Anti-Narcotic Cell, Cuffe Parade, Mumbai, on executing personal bond in the sum of Rs.50,000/- (Rupees fifth thousand only) with two solvent sureties for the like amount to the satisfaction of the trial Court.

(b) The Applicant shall not leave jurisdiction of the Special Court, N.D.P.S., Mumbai, and shall report before the concerned investigating officer once in two weeks for three months from today and thereafter once in a month on

Saturday between 10 a.m. to 1 p.m.

(c) The Applicant shall surrender his passport, if any, to the investigating officer. If he does not possess any passport, an affidavit to that effect be filed in this Court within a period of one week from the date of release.

. Application disposed of on the above terms.

. Parties to act on the authenticated copy of this order.

(A.M.KHANWILKAR,J.)